

# **EXHIBIT Z**

**Hitul Gandhi, et al v.  
Dell, Inc., et al**

**Hitul Gandhi  
November 5, 2008**

IN THE UNITED STATES DISTRICT COURT  
IN THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

HITUL GANDHI, Individually )  
and on behalf of a class )  
of others similarly )  
situated, )  
Plaintiff, )  
CASE NO:1:08cv-00248-SS  
V. )  
DELL, INC., and DELL )  
MARKETING USA, L.P., )  
Defendants. )

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ORAL DEPOSITION OF  
HITUL GANDHI  
November 5, 2008  
Volume 1

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ORAL DEPOSITION OF HITUL GANDHI, produced as a witness at the instance of the Defendant Dell Marketing USA, L.P., and duly sworn, was taken in the above-styled and numbered cause on the 5th of November, 2008, from 9:39 a.m. to 1:22 p.m., before Leigh Anne Williams, CSR in and for the State of Texas, reported by machine shorthand, at the law offices of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., 301 Congress Avenue, Suite 1250, Austin, Texas, pursuant to the Federal Rules of Civil Procedure.

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512-474-4363**

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<p style="text-align: right;">38</p> <p>1 understand the 'time and a half' calculation" -- Do you</p> <p>2 know what time and a half is referring to there?</p> <p>3 <b>A. I'm guessing the overtime that I'm working.</b></p> <p>4 Q. Okay. And were you familiar from prior work</p> <p>5 experience about overtime traditionally being paid at</p> <p>6 time and a half?</p> <p>7 <b>A. I was under the impression that it was -- I was</b></p> <p>8 <b>being paid time and a half.</b></p> <p>9 Q. Okay. And how did you get that impression?</p> <p>10 <b>A. On the overtime check -- or just through --</b></p> <p>11 <b>just because it's the law, and I thought, okay -- I</b></p> <p>12 <b>assumed it was the -- you know, that was the law. So, it</b></p> <p>13 <b>must be correct at time and a half.</b></p> <p>14 Q. Where did you get the understanding that it was</p> <p>15 the law? Just general knowledge?</p> <p>16 <b>A. Just general knowledge.</b></p> <p>17 Q. Okay. And then it says, "To understand the</p> <p>18 'time and a half' calculation, remember you are already</p> <p>19 paid for your time in your bi-weekly salary paycheck.</p> <p>20 The additional payment for the 'half' is reflected below</p> <p>21 and paid in addition to your regular salary paycheck."</p> <p>22 And that's one of the things that was on this</p> <p>23 presentation slide you remember having seen?</p> <p>24 <b>A. Yeah, I remember having seen this.</b></p> <p>25 Q. Okay. And then it gives -- looks like the way</p>	<p style="text-align: right;">40</p> <p>1 Q. And -- but in other words, you would get --</p> <p>2 <b>A. But my base salary would stay the same if I</b></p> <p>3 <b>worked 40 hours or more. So, from 40 hours, I got my</b></p> <p>4 <b>base salary, and then any overtime I paid, I got my</b></p> <p>5 <b>overtime check. If I worked under 40 hours, I only got</b></p> <p>6 <b>paid -- I'm not sure how they calculated the pay, but I</b></p> <p>7 <b>did not get the -- my full -- like, the same amount of</b></p> <p>8 <b>pay as I did if I worked 40 hours.</b></p> <p>9 Q. And explain that to me. If you -- Give me an</p> <p>10 example.</p> <p>11 <b>A. Well, what happened at one -- a couple</b></p> <p>12 <b>incidents I had forgotten to do Kronos, and when I got my</b></p> <p>13 <b>check, it showed zero. So -- on my base salary. I got</b></p> <p>14 <b>my commission, but I did not get my base salary.</b></p> <p>15 Q. And that was a case where you hadn't put any</p> <p>16 time into the Kronos?</p> <p>17 <b>A. Correct.</b></p> <p>18 Q. And, so, it kicked out a zero check?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. And then how was that corrected?</p> <p>21 <b>A. I filled out a form and put in my hours, and</b></p> <p>22 <b>it's always been 40 hours or more. It's never been less</b></p> <p>23 <b>than 40 hours because I have never worked less than</b></p> <p>24 <b>40 hours at Dell.</b></p> <p>25 Q. And once you -- Was that form called a WOW</p>
<p style="text-align: right;">39</p> <p>1 it's set out is kind of a hypothetical example to walk</p> <p>2 you through it, and this one has "SRIB Annual TTC." Do</p> <p>3 you know -- Was TTC a term that was used at Dell?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. And what does that mean?</p> <p>6 <b>A. I don't know.</b></p> <p>7 Q. Okay. You just know it was a -- it was</p> <p>8 something you had heard?</p> <p>9 <b>A. Yeah.</b></p> <p>10 Q. And here they just give an example of assume</p> <p>11 your TTC is 28,180 and a bi-weekly base salary of</p> <p>12 \$860.77. Do you happen to remember what your range of --</p> <p>13 when you started, what your bi-weekly base salary was?</p> <p>14 <b>A. I believe it first started out around 700 and</b></p> <p>15 <b>went all the way up to 800, around the mid-800s.</b></p> <p>16 Q. Was at the end -- When you left, your base</p> <p>17 salary was in the mid-800s, you think?</p> <p>18 <b>A. Yeah.</b></p> <p>19 Q. And was it the way it worked that regardless of</p> <p>20 the number of hours that you worked, your base salary</p> <p>21 would stay the same?</p> <p>22 <b>A. I thought that if I worked overtime, I would</b></p> <p>23 <b>get paid for that.</b></p> <p>24 Q. Right.</p> <p>25 <b>A. Yeah.</b></p>	<p style="text-align: right;">41</p> <p>1 form? Do you remember?</p> <p>2 <b>A. WOW form, yes.</b></p> <p>3 Q. And, so, you submitted a WOW ticket. Is that</p> <p>4 the terminology?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Putting in the hours, and then you got paid for</p> <p>7 it?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Okay. Any other times that you can recall</p> <p>10 other than the time -- the couple times when you got the</p> <p>11 zero checks that you were paid less than 40 hours?</p> <p>12 <b>A. No.</b></p> <p>13 Q. And then kind of going back to the</p> <p>14 hypothetical, it says -- just continuing on this</p> <p>15 calculation, shows that a bi-weekly base salary of</p> <p>16 860.77, then a weekly base salary you'd get by dividing</p> <p>17 your bi-weekly base salary by two. That's -- You</p> <p>18 understand how that calculation worked?</p> <p>19 <b>A. I understand that, but I've not seen it on a</b></p> <p>20 <b>weekly base salary.</b></p> <p>21 Q. Always saw it on a bi-weekly basis?</p> <p>22 <b>A. Correct. I've never seen that number of --</b></p> <p>23 <b>I've never seen the way they divide it on a weekly basis.</b></p> <p>24 Q. Okay. And then the next example -- and again,</p> <p>25 it looks like that these are just hypotheticals, if you</p>

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<p style="text-align: right;">94</p> <p>1 transaction queue?</p> <p>2 <b>A. Transactional, yes, very similar.</b></p> <p>3 Q. Did you have the -- log in to the phone, log</p> <p>4 out immediately when you came to business or --</p> <p>5 <b>A. I personally was doing that. I don't know if</b></p> <p>6 <b>other people were doing that, and I did not -- because I</b></p> <p>7 <b>did not know anyone when I came here, I wasn't advising</b></p> <p>8 <b>them to do that. I was doing that.</b></p> <p>9 Q. So, you just continued to do it the way you</p> <p>10 had?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And did you continue that for the whole time</p> <p>13 you were on the transaction side?</p> <p>14 <b>A. On the transactional side, I -- sometimes when</b></p> <p>15 <b>I come in, I -- no, I did not log into my phone right</b></p> <p>16 <b>away.</b></p> <p>17 Q. Okay. So, it wasn't as -- You didn't do it as</p> <p>18 religiously as you did when you were in Roseburg?</p> <p>19 <b>A. Correct.</b></p> <p>20 Q. What about when you got to the relationship</p> <p>21 side? Was it --</p> <p>22 <b>A. No.</b></p> <p>23 Q. Because in relationship side, you were never</p> <p>24 really --</p> <p>25 <b>A. Relationship side they did not -- they were not</b></p>	<p style="text-align: right;">96</p> <p>1 <b>A. Sometimes in the morning, again, during lunch</b></p> <p>2 <b>or after work.</b></p> <p>3 MR. FOX: Okay. You want to take about</p> <p>4 30 minutes for lunch and finish?</p> <p>5 MR. DAMERON: Yeah. How much more do you</p> <p>6 have?</p> <p>7 (Discussion off the record.)</p> <p>8 (Recess.)</p> <p>9 Q. (By Mr. Fox) Mr. Gandhi, let me show you</p> <p>10 what's been marked as Exhibit 6 to your deposition, and</p> <p>11 on the front of it, it says fiscal year '08, and my</p> <p>12 understanding at Dell is that means the bulk of that</p> <p>13 fiscal year would be 2007. Correct?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. And then it has some -- "RR/NV" to the side.</p> <p>16 Do you know what those stand for?</p> <p>17 <b>A. Round Rock and Nashville, I'm guessing.</b></p> <p>18 Q. Okay. "Compensation Overview." And have you</p> <p>19 seen this document? Was this document presented to you</p> <p>20 at any time during the year 2007?</p> <p>21 <b>A. No. Some of these pages were presented. Some</b></p> <p>22 <b>of these I do not know.</b></p> <p>23 <b>(Exhibit 7 marked.)</b></p> <p>24 Q. (By Mr. Fox) Did you -- In your last year,</p> <p>25 which would have been while you were in relationship</p>
<p style="text-align: right;">95</p> <p>1 <b>pushing when you logged in or when you logged out on the</b></p> <p>2 <b>phone. They were pushing how many hours -- We had a</b></p> <p>3 <b>spreadsheet which shows how many calls you took, how many</b></p> <p>4 <b>hours on the phone you were on, and they had tried to</b></p> <p>5 <b>manage us using that information.</b></p> <p>6 Q. And when you were in the business side here,</p> <p>7 did you have the huddles as you had in Roseburg or did</p> <p>8 that change?</p> <p>9 <b>A. We had the huddles.</b></p> <p>10 Q. Same frequency, more or about the --</p> <p>11 <b>A. Same frequency.</b></p> <p>12 Q. Okay. And would they be some in the morning --</p> <p>13 some before the shift, some during the shift, some</p> <p>14 afterwards?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Okay. And about how often do you think you</p> <p>17 would have them when you were -- once you were here in</p> <p>18 Round Rock?</p> <p>19 <b>A. In the transactional side, every day, every</b></p> <p>20 <b>other day.</b></p> <p>21 Q. What about once you got to the relationship</p> <p>22 side?</p> <p>23 <b>A. Relationship side, once every week, at least</b></p> <p>24 <b>once a week, maybe sometimes twice a week.</b></p> <p>25 Q. And when would that be? Would they be --</p>	<p style="text-align: right;">97</p> <p>1 sales, would you have had any compensation overview</p> <p>2 presentations?</p> <p>3 <b>A. We have -- I believe, yes, we have had</b></p> <p>4 <b>compensation presentations, yes.</b></p> <p>5 Q. And who would have made those? Do you recall?</p> <p>6 <b>A. It was Brian Stein's manager. It was once a</b></p> <p>7 <b>quarter, we had a meeting, talked about the previous</b></p> <p>8 <b>quarter, how the -- you know, how we did.</b></p> <p>9 Q. Would they have gone through any documents</p> <p>10 similar with -- to what you're looking at in Deposition</p> <p>11 Exhibit 6 talking about the various weightings and that</p> <p>12 sort of thing?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Okay. So, something maybe not exactly like</p> <p>15 what you're looking at, but something similar?</p> <p>16 <b>A. Similar, correct.</b></p> <p>17 Q. Would it -- Is it possible -- and I'm not</p> <p>18 trying to pin you down, but is it possible that you may</p> <p>19 have actually seen this; it's just that you can't recall</p> <p>20 seeing specific terms sitting here today?</p> <p>21 <b>A. Some of these I've seen. Other pages I have</b></p> <p>22 <b>not seen.</b></p> <p>23 Q. Okay. Let me show you what's been marked as</p> <p>24 Exhibit 7 and ask -- This is not a full presentation, but</p> <p>25 some slides taken out of the deck, and I'm not sure when</p>

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25 (Pages 94 to 97)

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<p style="text-align: right;">98</p> <p>1 this was presented, but let me ask you if you've seen any</p> <p>2 of these slides or something similar.</p> <p>3 <b>A. No, I have not seen these slides or --</b></p> <p>4 Q. Those don't strike a bell at all?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Now, you indicated when you first started, your</p> <p>7 compensation mix was 80/20 or 70 --</p> <p>8 <b>A. 70/30.</b></p> <p>9 Q. And then went to 60/40?</p> <p>10 <b>A. Went to 60/40.</b></p> <p>11 Q. At any time when you worked, did your</p> <p>12 commissions, even though it was only either 20 or 30 -- I</p> <p>13 mean, 30 or 40 percent of your total targeted</p> <p>14 compensation, did it ever exceed your base salary?</p> <p>15 <b>A. I'm not understanding what you mean.</b></p> <p>16 Q. Did you ever -- The -- As I understand what the</p> <p>17 60/40 mix is, it was designed to be 60 percent of your</p> <p>18 total pay would be base and 40 percent would be</p> <p>19 commissions.</p> <p>20 <b>A. Correct.</b></p> <p>21 Q. And my -- I guess my question is, at any point</p> <p>22 when you were working for Dell, did your commissions</p> <p>23 outweigh your base salary?</p> <p>24 <b>A. When you say outweigh, meaning that the --</b></p> <p>25 Q. Did you make more in commissions than you did</p>	<p style="text-align: right;">100</p> <p>1 this pay scheme?</p> <p>2 <b>A. Correct.</b></p> <p>3 Q. When you had -- Let me ask you, just -- what</p> <p>4 were -- and these are rough numbers because I'm sure we</p> <p>5 can go back and look at them, but roughly, what did you</p> <p>6 make per year while you were at Dell?</p> <p>7 <b>A. From -- The first year was fifty, sixty, up to</b></p> <p>8 <b>seventy thousand -- up to seventy thousand, then I kind</b></p> <p>9 <b>of plateaued around sixty-nine, seventy.</b></p> <p>10 Q. So, you were -- first -- and do you recall what</p> <p>11 you had been targeted at that first year?</p> <p>12 <b>A. The first year in '03, I'm guessing around</b></p> <p>13 <b>thirty-three. Yeah.</b></p> <p>14 Q. Thousand?</p> <p>15 <b>A. Around, yeah.</b></p> <p>16 Q. And you hit about fifty the first year?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And then your last year, do you remember what</p> <p>19 your targeted compensation was?</p> <p>20 <b>A. Yeah, forty -- the low forties -- or</b></p> <p>21 <b>thirty-seven to forty, around there.</b></p> <p>22 Q. Something like that?</p> <p>23 <b>A. Yeah.</b></p> <p>24 Q. And that was the year you were at sixty-nine,</p> <p>25 seventy?</p>
<p style="text-align: right;">99</p> <p>1 in base salary?</p> <p>2 <b>A. Pretty much all the time. Like, our base</b></p> <p>3 <b>salary was 700 -- around the 700 mark. My commission</b></p> <p>4 <b>some months were 2,000, 3,000, five -- up to 5,000 some</b></p> <p>5 <b>months.</b></p> <p>6 Q. So, even at a relatively early stage, you got</p> <p>7 to a point where your commissions were exceeding your</p> <p>8 base?</p> <p>9 <b>A. Oh, yes.</b></p> <p>10 Q. Was that generally true of sales</p> <p>11 representatives, if you know, or --</p> <p>12 MR. DAMERON: Objection, calls for</p> <p>13 speculation.</p> <p>14 You can answer.</p> <p>15 <b>A. Not all the top performers were in my</b></p> <p>16 <b>situation, but the average were -- they were paying --</b></p> <p>17 <b>they were getting paid the same as the base salary. If</b></p> <p>18 <b>you hit 100 percent, I believe you get paid the same as</b></p> <p>19 <b>whatever your base salary was.</b></p> <p>20 Q. (By Mr. Fox) Okay. So, the real way that you</p> <p>21 were able to exceed -- on a regular basis where your</p> <p>22 commission would exceed your base is by over -- getting</p> <p>23 into the kicker or acceleration?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. That's the key to making a lot of money under</p>	<p style="text-align: right;">101</p> <p>1 <b>A. Yeah -- No. That year -- Yeah, around the</b></p> <p>2 <b>sixty-nine -- sixty-eight, sixty-nine mark.</b></p> <p>3 Q. Was -- In terms of overall satisfaction with</p> <p>4 the compensation that you received, was Dell a good place</p> <p>5 or bad place to work?</p> <p>6 <b>A. It was a great place. I loved working for</b></p> <p>7 <b>Dell. I love the sale -- The reason I loved working for</b></p> <p>8 <b>Dell is because all the sales side of it. I love</b></p> <p>9 <b>selling. They -- Because I was one of the top</b></p> <p>10 <b>performers, they were not really pushing on me or</b></p> <p>11 <b>micromanaging me.</b></p> <p>12 <b>One of the steps -- or things I did not</b></p> <p>13 <b>like about Dell was when managers or anyone were</b></p> <p>14 <b>micromanaging. I understand why they do it, but it's --</b></p> <p>15 Q. It works better when you're not micromanaged?</p> <p>16 <b>A. Correct. For me, it works better when I'm not</b></p> <p>17 <b>micromanaged.</b></p> <p>18 Q. And as I understand, when you had the</p> <p>19 conversation that we talked about with Mr. -- Is it Sweet</p> <p>20 or Sweat?</p> <p>21 <b>A. Sweet.</b></p> <p>22 Q. Sam Sweet. And when Mr. Norman -- I think you</p> <p>23 indicated was one of the people who raised the overtime</p> <p>24 issue in Roseburg? Is that -- Am I remembering it</p> <p>25 correctly?</p>

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